

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 DRANOEL ENAJ BROWN,

10 Plaintiff,

11 Case No. C16-1332-JCC-JPD

12 v.

13 KING COUNTY, *et al.*,

14 Defendants.

15 ORDER GRANTING IN PART
16 PLAINTIFF'S MOTION TO AMEND
17 AND SUPPLEMENT PLEADINGS

18 This is a civil rights action brought under 42 U.S.C. § 1983. This matter comes before
19 the Court at the present time on plaintiff's motion to amend and supplement pleadings.

20 Defendants oppose plaintiff's motion. The Court, having considered plaintiff's motion,
21 defendants' response thereto, and the balance of the record, hereby Orders as follows:

22 (1) Plaintiff's motion to amend and supplement pleadings (Dkt. 45) is GRANTED in
23 part. Plaintiff, by way of the instant motion, seeks to amend his complaint to add three new
24 defendants to this action, and to add claims arising under the Americans with Disabilities Act

25
26
27
28 ORDER GRANTING IN PART PLAINTIFF'S
29 MOTION TO AMEND AND SUPPLEMENT
30 PLEADINGS - 1

1 (ADA) and the Rehabilitation Act (RA).¹ The proposed new defendants are Kerry Maccini,
2 Catherine Schroeder and David Pasoquen, all of whom are apparently members of the King
3 County jail health services staff.

4 Rule 15(a) of the Federal Rules of Civil Procedure provides that the court should freely
5 give leave to amend "when justice so requires." Five factors are typically considered when
6 assessing the propriety of a motion for leave to amend: (1) bad faith; (2) undue delay; (3)
7 prejudice to the opposing party; (4) futility of amendment; and (5) whether the plaintiff has
8 previously amended his complaint. *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004).
9 Defendants offer a variety of arguments in opposition to plaintiff's request to amend including
10 that the motion is unduly delayed, that the proposed amended complaint is deficient, and that
11 amendment would be futile with respect to at least some of plaintiff's proposed new claims. (*See*
12 Dkt. 46.)

13 Defendants argue that plaintiff's request to amend is unduly delayed, noting that plaintiff
14 had the records necessary to identify the additional defendants and claims by May 12, 2017, and
15 yet didn't seek leave to amend for the first time until July 14, 2017. (*See* Dkt. 46 at 4. *See also*,
16 Dkt. 41.) After that motion was denied on August 11, 2017, because plaintiff failed to submit
17 with his motion a proposed amended complaint, it took plaintiff almost two more weeks to
18 resubmit his motion to amend, this time with a proposed amended complaint. (*See* Dkts. 44, 45.)
19 Defendants note that plaintiff's second motion to amend was filed less than a month before the
20 dispositive motion filing deadline. (Dkt. 46 at 4.) While plaintiff could have, and perhaps

21 _____
22 ¹ Plaintiff also alleges a violation of the "AMA," but he fails explain what his reference to the AMA means
in this context or to explain how it might have been violated by the conduct of defendants.

1 should have, requested leave to amend earlier in these proceedings, the record does not suggest
2 any bad faith on plaintiff's part in failing to submit his request earlier. Plaintiff is proceeding
3 with this matter *pro se* and he appears to have litigated this matter relatively efficiently, albeit
4 imperfectly. Though defendants have now submitted their motion for summary judgment, and
5 will therefore suffer some inconvenience if plaintiff is permitted to amend, the prejudice to
6 defendants will be relatively minimal and is not sufficient to preclude amendment.

7 Defendants argue that plaintiff's proposed amended complaint is deficient because
8 plaintiff fails to identify the constitutional right(s) allegedly violated by each of the three
9 defendants he seeks to add to this action, and he fails to allege facts supporting each alleged
10 constitutional violation. (Dkt. 46 at 3.) Defendants also take issue with plaintiff's vague
11 reference to the ADA, and his failure to state what County policy defendants have allegedly
12 violated or how defendants violated the RA. (*See id.*) In addition to arguing that plaintiff's
13 complaint is deficient in various respects, defendants also argue that some of plaintiff's amended
14 allegations are futile. (*Id.* at 5.) The Court will address these arguments together.

15 With respect to plaintiff's federal constitutional claims, this Court concludes that plaintiff
16 has adequately identified the federal constitutional rights at issue and he has, arguably, alleged
17 sufficient facts in support of those claims to permit him to proceed with his constitutional claims.
18 However, plaintiff may proceed only against proposed new defendants Kerry Maccini and David
19 Pasoquen as it appears that plaintiff's proposed new claim against defendant Catherine Schroeder
20 is futile.

21 Plaintiff asserts in his proposed amended complaint that Ms. Schroeder took his
22 wheelchair away in October 2015, thereby violating his rights under the Eighth and Fourteenth

23 ORDER GRANTING IN PART PLAINTIFF'S
MOTION TO AMEND AND SUPPLEMENT
PLEADINGS - 3

1 Amendments. (See Dkt. 45-1 at 5-6.) However, defendants' counsel, in a declaration submitted
2 in support of defendants' response to plaintiff's motion to amend, states that according to records
3 that have been provided to plaintiff, Ms. Schroeder is not the nurse who took plaintiff's
4 wheelchair away in October 2015 and, in fact, that Ms. Schroeder did not even see plaintiff in
5 October 2015. (Dkt. 47 at 2, ¶ 5.) Plaintiff, in his reply brief, claims that there was a doctor who
6 took his wheelchair away in October 2015, and he *believes* that to be Catherine Schroeder. (Dkt.
7 48 at 2.) Given that plaintiff is apparently unable to confirm that it was Ms. Schroeder who
8 allegedly took his wheelchair away in October 2015, despite the fact that he is apparently in
9 possession of records which should permit him to do so, the Court concludes that amendment
10 would be futile with respect to plaintiff's proposed claim against Ms. Schroeder.

11 As to plaintiff's proposed new claims arising under the ADA and/or the RA, defendants
12 correctly point out that there is no individual liability under either the ADA or the RA and, thus,
13 it would be futile to permit plaintiff to amend his complaint to add ADA and RA claims against
14 the individual defendants in their individual capacities as to those claims. *Vincent v. Thomas*,
15 288 F.3d 1145, 1156 (9th Cir. 2002). To the extent plaintiff seeks to assert such claims against
16 defendant King County, the Court agrees with defendants that any purported RA claim is too
17 vague to proceed as plaintiff makes only one reference to the RA in his proposed amended
18 complaint, and he fails to allege any specific facts to support such a claim. Plaintiff also
19 provides little specificity with respect to his proposed ADA claims, though he does allege, with
20 relative clarity, that King County's policy regarding the transportation of inmates with

21
22

23 ORDER GRANTING IN PART PLAINTIFF'S
MOTION TO AMEND AND SUPPLEMENT
PLEADINGS - 4

1 disabilities violates the ADA. (See Dkt. 45-1 at 8-9.) Plaintiff should therefore be permitted to
2 proceed with that claim.²

3 In sum, plaintiff's motion to amend his complaint is granted to the extent he seeks to add
4 defendants Kerri Maccini and David Pasoquen, and to assert claims that these two individuals
5 violated his federal constitutional rights. Plaintiff's motion to amend is also granted to the extent
6 he seeks to add an ADA claim against defendant King County regarding its policy pertaining to
7 the transportation of inmates with disabilities. Plaintiff's motion to amend is denied in all other
8 respects.

9 (2) Defendants' recently filed motion for summary judgment is noted on the Court's
10 calendar for consideration on October 13, 2017. (Dkt. 49.) Plaintiff has filed a motion seeking
11 an extension of time to respond to defendants' summary judgment motion pending a ruling on
12 his motion to amend his pleading. (Dkt. 55.) Given that plaintiff has been granted leave to
13 amend, and that additional defendants will now need to be served, defendants' motion for
14 summary judgment is STRICKEN from the Court's calendar. Plaintiff's motion for an extension
15
16
17

18 ² To the extent plaintiff intends to allege ADA and RA claims against the individual defendants in their
19 official capacities, this Court notes that the Supreme Court has made clear that official-capacity suits "generally
20 represent only another way of pleading an action against an entity of which an officer is an agent." *Kentucky v.
Graham*, 473 U.S. 159, 165 (1985) (quoting *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 690 n.
21 55 (1978)). And, "[b]ecause the real party in interest in an official-capacity suit is the governmental entity and not
22 the named official, the entity's 'policy or custom' must have played a part in the violation of federal law." *Hafer v.
Melo*, 502 U.S. 21, 25 (1991) (internal quotations and citation omitted). The only policy clearly identified in
plaintiff's proposed amended complaint is that concerning transportation of inmates with disabilities, and plaintiff's
allegation in that regard references only King County. It would serve no purpose to recognize ADA or RA claims
against the individual defendants in their official capacities given these circumstances.

1 of time is STRICKEN as moot. The Court will establish a new dispositive motion filing
2 deadline once the new defendants have been served and an answer has been filed.³

3 (3) The Clerk is directed to file plaintiff's third amended complaint (Dkt. 45-1). The
4 Clerk is further directed to send copies of this Order to plaintiff, to counsel for defendants, and to
5 the Honorable John C. Coughenour.

6 DATED this 4th day of October, 2017.

James P. Donohue

JAMES P. DONOHUE
Chief United States Magistrate Judge

³ It does not appear that additional discovery should be necessary given the limited scope of the amendments and, thus, the Court will not establish a new discovery deadline. If any party believes additional discovery is necessary, that party will need to seek leave of Court before any such discovery is attempted. Any motion requesting additional discovery must clearly explain what additional discovery is desired and why it is necessary.

**ORDER GRANTING IN PART PLAINTIFF'S
MOTION TO AMEND AND SUPPLEMENT
PLEADINGS - 6**